

## § 278.10

(m) *Amendment No. 383.* The program changes made to § 278.1 by this amendment are effective September 29, 2000.

[Amdt. 136, 43 FR 43274, Sept. 22, 1978]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 278.9, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

## § 278.10 [Reserved]

# PART 279—ADMINISTRATIVE AND JUDICIAL REVIEW—FOOD RETAILERS AND FOOD WHOLESALERS

## Subpart A—Administrative Review

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EDITORIAL NOTE: Nomenclature changes to part 279 appear at 68 FR 41052, July 10, 2003.

## Subpart A—Administrative Review

### § 279.1 Jurisdiction and authority.

A food retailer or wholesale food concern aggrieved by administrative action under § 278.1, § 278.6 or § 278.7 of this chapter may, within a period stated in this Part, file a written request for review of the administrative action with FNS. On receipt of the request for review, the questioned administrative action shall be stayed pending disposition of the request for review, except in the case of a permanent disqualification as specified in § 278.6(e)(1) of this chapter.

(a) *Jurisdiction.* Reviewers designated by the Secretary shall act for the Department on requests for review filed by food retailers or wholesale food con-

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cerns aggrieved by any of the following actions:

(1) Denial of an application or withdrawal of authorization to participate in the program under § 278.1 of this chapter;

(2) Disqualification under § 278.6 of this chapter, except that a disqualification for failure to pay a civil money penalty shall not be subject to administrative review and a disqualification imposed under § 278.6(e)(8) of this chapter shall not be subject to administrative or judicial review;

(3) Imposition of a fine under § 278.6 of this chapter;

(4) Denial of all or part of any claim asserted by a firm against FNS under § 278.7(c), (d), or (e) of this chapter;

(5) Assertion of a claim under § 278.7(a) of this chapter; or

(6) Forfeiture of part or all of a collateral bond or a draw down of part or all of a letter of credit under § 278.1 of this chapter, if the request for review is made by the authorized firm. FNS shall not accept requests for review made by a bonding company or agent or commercial bank.

(b) *Authority.* The determination of the designated reviewer shall be the final administrative determination of the Department, subject, however, to judicial review under section 14 of the Food Stamp Act and subpart B of this part.

[68 FR 41052, July 10, 2003, as amended at 73 FR 79595, Dec. 30, 2008]

### § 279.2 Manner of filing requests for review.

(a) *Submitting requests for review.* Requests for review submitted by firms shall be mailed to or filed with Director, Administrative Review Division, U.S. Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, Virginia 22302.

(b) *Content of requests.* Requests for review shall be in writing and shall state the name and business address of the firm involved, and the name, address and position with the firm of the person who signed the request. The request shall be signed by the owner of the firm, an officer or partner of the firm, or by counsel, and need not be under oath.

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(c) *Time limit for requesting review.* A request for review shall be filed within 10 days of the date of delivery of the notice of the action for which review is requested. For purposes of determining whether a filing date is timely:

(1) The filing date shall be the post-mark date of the request, or equivalent if the written request is filed by a means other than mail;

(2) In computing the 10 day period, the day of delivery of the notice of the action for which review is requested may not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday. In that case, the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. As used in this paragraph, "legal holiday" includes New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day designated as a holiday by the President or the Congress of the United States.

[Amdt. 136, 43 FR 43279, Sept. 22, 1978, as amended by Amdt. 236, 49 FR 22058, May 25, 1984. Redesignated and amended at 68 FR 41053, July 10, 2003]

### § 279.3 Content of request for review.

(a) *Identifying the request.* Requests for review shall clearly identify the administrative action from which the review is requested. This identification shall include the date of the letter or other written communication notifying the firm of the administrative action, the name and title of the person who signed the letter or other communication, and whether the action under appeal concerns a denial of an application or a withdrawal of authorization to participate, a disqualification from further participation, a civil money penalty, or a denial of all or any part of a claim or a fine.

(b) *Supporting the request.* The request shall include information in support of the request showing the grounds on which review is being sought, or shall state that supporting information will be filed in writing at a later date. In the latter case, the designated reviewer

shall notify the firm of the date by which the information must be filed.

[Amdt. 136, 43 FR 43279, Sept. 22, 1978, as amended by Amdt. 236, 49 FR 22058, May 25, 1984; Amdt. 334, 57 FR 3913, Feb. 3, 1992. Redesignated and amended at 68 FR 41053, July 10, 2003]

### § 279.4 Action upon receipt of a request for review.

(a) *Holding action.* Upon receipt of a request for review of administrative action, the administrative action shall be held in abeyance until the designated reviewer has made a determination. However, permanent disqualifications for trafficking shall not be held in abeyance and shall be effective immediately as specified in 278.6(b)(2) of this chapter. If the disqualification is reversed through administrative or judicial review, the Secretary shall not be held liable for the value of any sales lost during the disqualification period. If the administrative action in question involves the denial of a claim brought by a firm against FNS, or the forfeiture of a collateral bond or the draw down on an irrevocable letter of credit, the designated reviewer shall direct the firm not be approved for participation, not be paid any part of the disputed claim, or not be reimbursed for any bond forfeiture or irrevocable letter of credit withdrawal, as appropriate until the designated reviewer has made a determination.

(b) *Filing supporting information.* If the request filed by the firm includes a request for an opportunity to file written information in support of its position at a later date, the designated reviewer shall promptly notify the firm of the date by which the information shall be filed. If the firm fails to file any information in support of its position by the designated date, the information submitted with the original request shall be considered to be the only information submitted by the firm. In that case, if no information in support of the firm's position was submitted with the original request, the action of the appropriate FNS office shall be final.

(c) *Extensions of time.* Upon timely written request to FNS by the firm requesting the review, FNS may grant